

Message Text

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PAGE 01 EC BRU 06552 181847Z

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ACTION EB-07

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E.O. 11652: N/A

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SUBJECT: EC COMMISSION TAKES LEGAL ACTION AGAINST THREE MEMBER
STATES WHO SIGNED THE UN CODE OF CONDUCT FOR LINER
CONFERENCES

REF: A. BRUSSELS 6486

B. BONN 11383

C. OECD PARIS 16844

D. PARIS 16842

E. EC BRUSSELS 5850

F. EC BRUSSELS 5555

1. BEGIN SUMMARY: THE EC COMMISSION HAS FORMALLY ACCUSED THREE
MEMBER STATES (FRANCE, BELGIUM AND GERMANY) OF HAVING VIOLATED THE
ROME TREATY BY SIGNING THE CONVENTION ON THE UN CODE OF CONDUCT FOR
LINER CONFERENCES. THE CASES, IF THEY DO END UP IN THE EUROPEAN
COURT OF JUSTICE, WILL INVOLVE INTERPRETATIONS OF ARTICLE 113 AND
116 OF THE ROME TREATY WHICH GO FAR BEYOND THE SPECIFIC MARITIME
ISSUES WHICH ARE THE SUBJECT OF THE LINER CODE. END SUMMARY.

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PAGE 02 EC BRU 06552 181847Z

2. THE EC COMMISSION, ON JULY 15, SENT FRANCE, GERMANY, AND BELGIUM, THE THREE MEMBER STATES WHICH SIGNED THE UN CODE OF CONDUCT FOR LINER CONFERENCES (SEE REFTELS A-3) A LETTER ACCUSING THOSE COUNTRIES OF HAVING VIOLATED PROVISIONS OF THE ROME TREATY BY SIGNING THE CODE CONVENTION. AS REPORTED IN REFTELS E AND F AND PREVIOUS, THE COMMISSION, (INCLUDING VICE PRESIDENT SOAMES PERSONALLY AT THE JUNE 24 EC COUNCIL), HAS BEEN WARNING THE MEMBER STATES WHO HAD INDICATED THEIR INTENTION TO SIGN, THAT THEY WOULD BE TAKEN TO THE EUROPEAN COURT OF JUSTICE WERE THEY TO DO SO. THE LETTER BEGINS THE PROCEDURE FOR BRINGING MEMBER STATES BEFORE THE COURT UNDER ARTICLE 169 OF THE ROME TREATY. THE THREE MEMBER STATES NORMALLY HAVE 21 DAYS IN WHICH TO REPLY TO THE COMMISSION'S ALLEGATIONS ALTHOUGH WITH THE COMMISSION STAFF NOT EXPECTED BACK FROM VACATION UNTIL EARLY SEPTEMBER, THE DEADLINE WILL NOT BE STRICTLY ENFORCED. THE NEXT STEP IN THE PROCESS WILL BE FOR

THE COMMISSION TO GIVE A "REASONED OPINION" IN WHICH IT WILL SET OUT ITS ARGUMENTATION, THIS TIME TAKING INTO ACCOUNT THE MEMBER STATE RESPONSES. THE COMMISSION AT THAT STAGE MAY TURN THE CONTROVERSY OVER TO THE EUROPEAN COURT OF JUSTICE.

3. COMMISSION SOURCES HAVE TOLD US THAT THE COMMISSION'S CASE IS BASED ON TWO LINES OF ARGUMENT:

(A) SIGNATURE OF THE TREATY IS IN VIOLATION OF ARTICLE 5 OF THE ROME TREATY WHICH PROVIDES THAT MEMBER STATES SHALL ABSTAIN FROM ANY MEASURE WHICH COULD JEOPARDIZE THE ATTAINMENT OF THE OBJECTIVES OF THE TREATY. OBJECTIVES OF THE TREATY ARE JEOPARDIZED BY THE SIGNATURE OF THE LINER CODE BECAUSE THE CODE IS INCOMPATIBLE WITH TREATY ARTICLE 7 (PROHIBITION AGAINST DISCRIMINATION ON THE GROUNDS OF NATIONALITY) AND TREATY ARTICLE 52 (PROHIBITION AGAINST RESTRICTIONS ON FREEDOM OF ESTABLISHMENT);

(B) THE LINER CODE COVERS SOME AREAS THAT ARE WITHIN THE COMPETENCE OF THE COMMUNITY (ARTICLE 113) AND SOME THAT REMAIN WITHIN THE COMPETENCE OF THE MEMBER STATES. WITH REGARD TO THE FORMER, IT IS AN INFRINGEMENT OF THE TREATY OF ROME FOR INDIVIDUAL MEMBER STATES TO SIGN AN INTERNATIONAL AGREEMENT WHICH IS IN THE EXCLUSIVE COMPETENCE OF THE COMMUNITY. REGARDING THE LATTER, ARTICLE 116 OF THE LIMITED OFFICIAL USE

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PAGE 03 EC BRU 06552 181847Z

ROME TREATY REQUIRES THAT "MEMBER STATES SHALL, IN RESPECT OF ALL MATTERS OF PARTICULAR INTEREST TO THE COMMON MARKET, PROCEED WITHIN THE FRAMEWORK OF INTERNATIONAL ORGANIZATIONS OF AN ECONOMIC CHARACTER ONLY BY COMMON ACTION." SINCE MOST OF THE EC'S EXTERNAL TRADE IS CARRIED BY SHIP, FREIGHT CHARGES HAVE AN IMPORTANT BEARING ON THE EC'S COMPETITIVE POSITION. FURTHERMORE THE LINER CODE AFFECTS THE EC'S RELATIONS WITH LDCS. SINCE THESE AREAS ARE OF PARTICULAR

INTEREST TO THE COMMON MARKET, THE SIGNATORIES WERE IN VIOLATION OF ARTICLE 116 AS THEIR SIGNATURES DID NOT REPRESENT "COMMON ACTION."

4. THE IMPORTANCE OF THIS CASE, ACCORDING TO OUR SOURCES, GOES FAR BEYOND THE MARITIME ISSUES. WHETHER THE EC COUNTRIES WILL RATIFY THE CODE AND WITH WHAT RESERVATIONS AND AMENDMENTS REMAINS TO BE DEBATED IN THE EC COUNCIL FOR SOME TIME (SEE REFTEL E ON THE DRAFT COUNCIL DECISION ON THE LINER CODE). THE IMPORTANT ISSUES WILL BE THE COURT'S INTERPRETATION OF ARTICLES 113 AND 116 OF THE ROME TREATY. WERE THE COURT TO FOLLOW THE COMMISSION'S REASONING, THE SOVEREIGNTY OF THE MEMBER STATES TO ACT ON THEIR OWN REGARDING INTERNATIONAL ECONOMIC AGREEMENTS WOULD BE SEVERELY CIRCUMSCRIBED. GREENWALD

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